

## BEFORE THE CONTRACTORS BOARD

## STATE OF IDAHO

In the Matter of the Registration of:	)	
	)	Case No. CON-2009-5
MOFFAT & MOFFAT, INC.,	)	
Registration No. RCE-7869,	)	<b>STIPULATION AND</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
_____	)	

WHEREAS, information has been received by the Idaho State Contractors Board (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against Moffat & Moffat, Inc., aka Moffat & Moffat Construction, Inc., ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A. Stipulated Facts and Law**

A.1. The Board regulates the practice of contracting in the State of Idaho in accordance with title 54, chapter 52, Idaho Code.

A.2. Respondent is an Idaho corporation owned and operated by Robert W. Moffat as President/Secretary and Gale A. Moffat as Vice President. The Board has issued Registration No. RCE-7869 to Respondent. Respondent's registration is subject to the provisions of title 54, chapter 52, Idaho Code, and the Board's rules at IDAPA 24.21.01, *et seq.*

A.3. On or about January 28, 2008, Robert W. Moffat was charged with four counts of felony Forgery in State v. Moffat, Ada County District Court Case No. CR-MD-2008-0001237. The Forgery charges alleged Respondent falsely overcharged customers

to build high-end homes on a cost-plus basis.

A.4. On or about August 28, 2008, after a plea of guilty to one count of felony Forgery, an Order Withholding Judgment and Order of Probation and Commitment was entered against Robert W. Moffat in Case No. CR-MD-2008-0001237. A redacted copy of the Order Withholding Judgment and Order of Probation and Commitment in Case No. CR-MD-2008-0001237 is attached as Exhibit A.

A.5. The allegations of Paragraphs A.3 and A.4, if proven, would violate the laws and rules governing the practice of contracting, specifically Idaho Code § 54-5215(2)(f) (contractor has been convicted of or engaged in conduct constituting a violation of public laws, ordinances or rules of this state relevant to contracting, reflecting on the registered contractor's ability or qualifications to continue contracting for other persons, and making the registered contractor a threat to the public safety, health or well-being). Violations of this law constitutes grounds for disciplinary action against Respondent's registration to practice contracting in the State of Idaho.

### **B. Waiver of Procedural Rights**

I, Robert W. Moffat, President of Respondent Moffat & Moffat, Inc., by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.3. and A.4. I further understand that these allegations constitute cause for disciplinary action upon Respondent's registration to practice contracting in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of contracting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into

this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon Respondent's registration without further process.

### **C. Stipulated Discipline**

C.1. Registration No. RCE-7869 issued to Respondent Moffat & Moffat, Inc. is hereby SUSPENDED until Robert W. Moffat has successfully completed his probation in CR-MD-2008-0001237 and the Board has issued a two (2) year order of probation to Respondent pursuant to Paragraph C.7 below. The mandatory suspension period shall commence five (5) days from the date of entry of the Board's Order.

C.2. Respondent shall pay to the Board an administrative fine in the amount of Five Hundred and No/100 Dollars (\$500.00) within one hundred twenty (120) days of the entry of the Board's Order.

C.3. Respondent shall pay investigative costs and attorney fees in the amount of Eight Hundred Fourteen and 92/100 Dollars (\$814.92) within one hundred twenty (120) days of the entry of the Board's Order.

C.4. Robert W. Moffat shall comply with all conditions of his probation in Case No. CR-MD-2008-0001237.

C.5. Respondent must request a meeting with the Board upon release from Robert W. Moffat's probation in Case No. CR-MD-2008-0001237. Any request to meet with the Board must include:

- a. certification from his probation officer and/or other appropriate court officer that he has successfully completed his probation;
- b. provide the Board with any and all documents evidencing Respondent's compliance with Paragraphs C.2 and C.3 above;
- c. provide the Board with a copy of the contract Respondent will use in all construction projects falling under the Board's jurisdiction which does not allow Respondent to utilize cost-plus pricing; and

d. provide the Board a description of Respondent's billing practices and policies.

C.6. The Board's staff will use reasonable efforts to schedule this meeting to occur at the earlier of (i) the Board's next regularly scheduled meeting following staff's receipt of Respondent's written request for reinstatement certifying that Respondent has fully complied with the stipulation and providing all documents referenced above or (ii) within sixty (60) days following staff's receipt of such request for a meeting. Respondent must provide any written request for reinstatement to the Contractors Board, c/o State of Idaho Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702-5642. Respondent's request for a meeting with the Board must reference this paragraph, C.6., in a manner intended to alert Board staff to the scheduling considerations referenced above.

C.7. At the meeting with the Board, the Board shall issue an order of probation to Respondent whereby Registration No. RCE-7869 is placed on probation for two (2) years. The Board's order of probation shall include conditions and restrictions placed on Respondent's registration throughout its probation with the Board, in its discretion, as may deem reasonable to protect the public. The terms of Respondent's probation will include, but not be limited to:

a. Respondent shall inform any customer or potential customer that Robert W. Moffat pled guilty to a felony forgery charge, unless such conviction has been set aside by the court as a result of the withheld judgment and Respondent has submitted such documentation to the Board.

b. Respondent must enter into a written contract for every job on a contract form approved by the Board.

c. Respondent shall not engage in cost-plus pricing.

d. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of contracting in the State of Idaho.

e. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

f. If Respondent leaves Idaho for three (3) continuous months, or resides or practices outside of the state, Respondent must notify the Board in writing of the dates of departure, address of intended residence or place of business, and whether Respondent intends to return. Periods of time spent outside Idaho will not apply to satisfy this probationary period or excuse compliance with the terms of this Stipulation.

g. Respondent shall fully cooperate with the Board and its agents, and shall make all relevant files, records, correspondence or other documents available immediately upon the demand of any member of the Board and its agents.

C.8. At the conclusion of the two-year probationary period and provided Respondent has complied with all other terms of this Stipulation and any other probation orders issued by the Board, Respondent may request from the Board termination of the conditions of probation. Any request for termination of probation must be accompanied by written proof of compliance with the terms of this Stipulation.

C.9. All costs associated with compliance with the terms of this Stipulation are the sole responsibility of Respondent.

C.10. Any violation of the terms of this Stipulation or probation order shall warrant further Board action, including revocation of Registration No. RCE-7869. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

#### **D. Presentation of Stipulation to Board**

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, this matter will proceed according to the administrative Complaint that was filed with the Board on January 7, 2009. Respondent

waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing. Moreover, all rights waived by Respondent, except as set forth in Paragraph D.2., shall be restored.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

#### **E. Violation of Stipulation and Consent Order**

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent

Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's registration, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 28 day of Oct, 2009.

MOFFAT & MOFFAT, INC.

By Robert W. Moffat  
Robert W. Moffat, President  
Respondent

DATED this 28<sup>th</sup> day of October, 2009.

NEVIN, BENJAMIN, MCKAY &  
BARTLETT, LLP

By Michael Bartlett  
Michael Bartlett  
Attorney for Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 2<sup>nd</sup> day of November, 2009.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Karin Magnelli  
Karin Magnelli  
Deputy Attorney General

### ORDER

Pursuant to Idaho Code § 54-5207, the foregoing is adopted as the decision of the Board of Contractors in this matter and shall be effective on the 11<sup>th</sup> day of NOVEMBER, 2009. IT IS SO ORDERED.

IDAHO STATE BOARD  
OF CONTRACTORS

By Anthony J. Hughes  
Anthony J. Hughes, Chair



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of November, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Robert W. Moffat  
MOFFAT & MOFFAT, INC.  
1125 W. Two Rivers  
Eagle, ID 83616

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Michael Bartlett  
NEVIN, BENJAMIN, MCKAY &  
BARTLETT, LLP  
P.O. Box 2772  
Boise, Idaho 83701

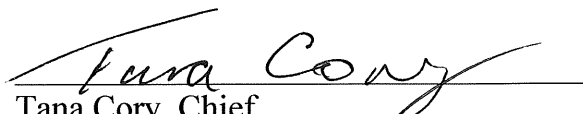
- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Michael J. Elia  
MOORE, BASKIN & ELIA, LLP  
P.O. Box 6756  
Boise, ID 83707

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Karin Magnelli  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

  
Tana Cory, Chief  
Bureau of Occupational Licenses

NO. \_\_\_\_\_  
A.M. 9:20 FILED P.M. 1

SEP 02 2008

J. DAVID NAVARRO, Clerk  
By [Signature] DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

ROBERT WAYNE MOFFAT,

DOB: [REDACTED]

SS#: [REDACTED]

Defendant.

Case No. CR-MD-2008-0001237

ORDER WITHHOLDING  
JUDGMENT AND ORDER OF  
PROBATION AND COMMITMENT

WHEREAS, on the 27th day of June, 2008, ROBERT WAYNE MOFFAT was arraigned before the Honorable Timothy Hansen, District Judge, for the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and charged with the crimes of FORGERY, FELONY, I.C. §18-3601, **(FOUR (4) COUNTS)**;

AND WHEREAS, through due process of law, the said Defendant, ROBERT WAYNE MOFFAT, plead guilty to the offense of COUNT IV. FORGERY, FELONY, I.C. §18-3601, as charged in the Information. Counts I, II, and III having been dismissed, and requests probation from said District Court.

AND WHEREAS, the said District Court, having ascertained the desirability of granting

the petition of probation, does hereby order and decree that the said Defendant, ROBERT WAYNE MOFFAT, be placed on probation and sentence is hereby withheld for a period of five (5) years under the following conditions, to-wit:

A. That the probation is granted to and accepted by the probationer, subject to all its terms and conditions and with the understanding that the Court may at any time, in case of the violation of the terms of the probation, cause the probationer to be returned to the Court for the imposition of sentence as prescribed by law or any other punishment as the Court may see fit to hand down.

B. That the probationer shall be under the legal custody and control of the Director of Probation and Parole of the State of Idaho and the District Court with supervised probation and subject to the rules of probation as prescribed by the Board of Correction and the District Court.

C. Special conditions, to-wit:

1. Defendant shall not violate any law or ordinance of the United States or any city, state or county therein, wherein a fine or bond forfeiture of more than \$250.00 or a jail term could be imposed as a penalty.
2. Defendant shall pay the amounts set out in this judgment for fines, fees, and costs. Payments shall be paid in monthly installments in an amount to be arranged with his/her probation officer.
3. Defendant shall enroll in and meaningfully participate in any and all programs of rehabilitation recommended by his/her probation officer, including but not limited to: a cognitive self-change program.
4. During the entire term of his/her probation, said Defendant shall maintain steady employment, be actively seeking employment, or be enrolled as a full-time student.
5. Defendant shall not purchase, carry or have in his/her possession any firearm(s) or other weapons.

6. Defendant agrees to waive his/her Fourth Amendment rights applying to search and seizure as provided by the Fourth Amendment of the Constitution, and to submit to a search by his/her probation officer or law enforcement officer of his/her person, residence, vehicle or other property upon request of such probation officer or law enforcement officer.
7. Upon request of his/her probation officer, Defendant agrees to submit to polygraph examinations administered by qualified examiners and limited in scope to those matters which are calculated to determine whether Defendant is complying with the lawful conditions of probation.
8. Defendant is to serve thirty (30) days in the Ada County Jail, with credit for zero (0) days served, leaving a balance of thirty (30) days to serve. Defendant shall have all options to serve jail time available. Jail service is to commence within ninety (90) days and is to be arranged through his/her probation officer.
9. Defendant may be required to serve an additional ninety (90) days in the Ada County Jail at the discretion of his/her probation officer and upon approval of this Court.
10. Defendant shall perform one thousand (1000) hours of community service and pay the sixty (60) cent workman's compensation fee for each hour of service. Community service is to be completed within two (2) years.
11. Defendant shall not do any cost plus construction during the entire term of his probation. Any construction Defendant performs shall be through a written contract only. Defendant must notify in writing any person with whom he contracts that he has plead guilty to a forgery.
12. If necessary, Defendant's probation officer may designate a real estate attorney or similarly qualified person to look into Defendant's business practices. The fee for that person will be at the expense of Defendant.
13. The Court retains jurisdiction over the matter of restitution for one hundred eighty (180) days.

D. Pursuant to Idaho Code, the Defendant be, and hereby is, assessed and Ordered to pay the following fines, fees and costs:

1. Court costs in the amount of \$17.50 (I.C. § 31-3201A(b), I.C. § 31-4602).



2. County Administrative Surcharge Fee in the amount of \$10.00 (I.C. §31-4502).
3. ISTARs technology fee in the amount of \$10.00 (I.C. §31-3201(5)).
4. Victim's Compensation Fund fees in the amount of \$50.00 (I.C. §72-1025).
5. Defendant is to pay supervision of probation and parole costs in an amount not to exceed the maximum allowable by I.C. §20-225.
6. P.O.S.T. fees in the amount of \$10.00 (I.C. §31-3201B).
7. Peace Officer and Detention Officer Temporary Disability Fund \$3.00 (I.C. §72-1105).
8. A community service fee of sixty (60) cents per hour will be paid to the Clerk of the Court for Defendant's workers compensation coverage (I.C. §31-3201C).
9. A fine in the amount of \$10,000.

E. THAT THE PROBATIONER, IF PLACED ON PROBATION TO A DESTINATION OUTSIDE THE STATE OF IDAHO, OR LEAVES THE CONFINES OF THE STATE OF IDAHO WITH OR WITHOUT PERMISSION OF THE DIRECTOR OF PROBATION AND PAROLE DOES HEREBY WAIVE EXTRADITION TO THE STATE OF IDAHO AND ALSO AGREES THAT THE SAID PROBATIONER WILL NOT CONTEST ANY EFFORT BY ANY STATE TO RETURN THE PROBATIONER TO THE STATE OF IDAHO.

IT IS FURTHER ORDERED That the Clerk deliver a certified copy of this Order Withholding Judgment and Commitment to the said Sheriff, which shall serve as the commitment of the Defendant.

Pursuant to I.C. §18-309, Defendant shall receive credit for zero (0) days served in prejudgment incarceration.

Done in open court this 28th day of August, 2008.



TIMOTHY HANSEN  
District Judge